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OFFICE OF PETITIONS

In re Application of :
Vardaraj, et al. :
Application No. 10/675,169 : DECISION ON PETITION
Filed: September 30, 2003 : UNDER 37 CFR 1.78(a)(3)
Attorney Docket No. P2002J108 US2 :
:

This is a decision on the petition under 37 CFR 1.78(a)(3), filed June 2, 2006, to accept an unintentionally delayed claim under 35 U.S.C. §120 for the benefit of the prior-filed nonprovisional applications set forth in the concurrently filed amendment.

The petition is **DISMISSED**.

A petition for acceptance of a claim for late priority under 37 CFR 1.78(a)(3) is only applicable to those applications filed on or after November 29, 2000. Further, the petition is appropriate only after the expiration of the period specified in 37 CFR 1.78(a)(2)(ii). In addition, the petition under 37 CFR 1.78(a)(3) must be accompanied by:

- (1) the reference required by 35 U.S.C. § 120 and 37 CFR 1.78(a)(2)(i) of the prior-filed application, unless previously submitted;
- (2) the surcharge set forth in § 1.17(t); and
- (3) a statement that the entire delay between the date the claim was due under 37 CFR 1.78(a)(2)(ii) and the date the claim was filed was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional.

The petition does not comply with item (1)

37 CFR 1.78(a)(2)(i) requires that any nonprovisional application claiming the benefit of one or more prior-filed copending nonprovisional applications must contain or be amended to contain a reference to each such prior-filed application, identifying it by application number (consisting of the series code and serial number) and indicating the relationship of the applications. The

relationship between the applications is whether the subject application is a continuation, divisional, or continuation-in-part of a prior-filed nonprovisional application. If the benefit of more than one nonprovisional application is claimed, then the relationship between each application (i.e., continuation, divisional, or continuation-in-part) must be specified in order to establish copendency throughout the entire chain of prior-filed applications. For example, a statement that "this application claims the benefit of Application Nos. C, B, and A" or "this application is a continuing application of Application Nos. C, B, and A" is improper. Applicant instead must state, for example, "this application is a continuation of Application No. C, filed ---, which is a continuation of Application No. B, filed ---, which is a continuation of Application No. A, filed ---." See MPEP Section 201.11, Rev. 2, May 2004, Reference to Prior Application.

The amendment filed June 2, 2006 is unacceptable because it contains unclear references and recites the nonprovisional applications in reverse order. The most recently filed nonprovisional application (No. 10/412,190) is listed last and the earliest filed nonprovisional application (No. 09/312,728) is listed first. The nonprovisional applications should be listed in order from the most recently filed to the earliest filed. The relationships in the chain of applications should be clearly stated.

37 CFR § 1.78(a)(3) requires a statement that the entire delay between the date the claim was due under 37 CFR § 1.78(a)(2)(ii) and the date the claim was filed was unintentional. A proper claim has not been filed. Since the statement contained in the petition varies from the language required by 37 CFR 1.78(a)(3), the statement contained in the instant petition is being construed as the statement required by 37 CFR 1.78(a)(3). If this is not a correct interpretation, petitioner should promptly notify the Office.

Before the petition under 37 CFR § 1.78(a)(3) can be granted, a renewed petition under 37 CFR § 1.78(a)(3) and a substitute amendment or an Application Data Sheet (complying with 37 CFR 1.121 and 37 CFR 1.76(b)(5)) which state the relationships between each application in the chain (in proper order) are required.

Further correspondence with respect to this matter should be addressed as follows:

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Any questions concerning this matter may be directed to Petitions Attorney Shirene Willis Brantley at (571) 272-3230.



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